APPENDIX.

Statutes and Regulations Involved.

Revenue Act of 1926, c. 27, 44 Stat. 9:

Credits and Refunds

Sec. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

(b) Except as provided in subdivisions (c), (d), (e), and (g) of this section—

(1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this Act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior Act, unless before the expiration of such period a claim therefor is filed by the taxpayer; and

(2) The amount of the credit or refund shall not exceed the portion of the tax paid during the three or four years, respectively, immediately preceding the filing of the claim, or if no claim was filed, then during the three or four years, respectively, immediately preceding the allowance of the credit or refund.

Revenue Act of 1928, c. 852, 45 Stat. 791:

Sec. 607. Effect of expiration of period of limitation against United States.

Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim. (U. S. C., Title 26, Sec. 1670.)

Sec. 608. Effect of expiration of period of limitation against taxpayer.

A refund of any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) made after the enactment of this Act, shall be considered erroneous—

(a) if made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) in the case of a claim filed within the proper time and disallowed by the Commissioner after the enactment of this Act, if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the United States Board of Tax Appeals or the courts. (U. S. C., Title 26, Sec. 1674.)

Sec. 609. Erroneous credits.

(a) Credit against barred deficiency.—Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 607.

(b) Credit of barred overpayment.—A credit of an overpayment in respect of any tax shall be void if a refund of such overpayment would be considered erroneous under section 608. (U. S. C., Title 26, Sec. 1675.)

(c) Application of section.—The provisions of this section shall apply to any credit made before or after the enactment of this Act.

Revenue Act of 1934, c. 277, 48 Stat. 680:

Sec. 503. Statute of limitations on suits for refund.

Section 608 (b) (2) of the Revenue Act of 1928 is amended by adding at the end thereof a new sentence to read as follows:

"If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement." (U. S. C., Title 26, Sec. 1674.)

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 990

JOSEPHINE V. HALL, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

The decision below is in accord with *McEachern* v. *Rose,* 302 U. S. 56. This Court there held that the equitable considerations which governed in *Stone* v. *White,* 301 U. S. 532, were inapplicable because of certain statutory provisions (Sections 607 and 609 of the Revenue Act of 1928). Like statutory provisions are present here (Sections 608 and 609 of the Revenue Act of 1928), and similarly bring into play the rule of the *McEachern* case.

We think that the statutory provisions relied upon in the *McEachern* case were not intended to

render the rule of *Stone* v. *White* inapplicable, and that the decision in the *McEachern* case is erroneous. The *McEachern* case, however, supports the decision below in this case, and unless this Court is willing to reexamine the *McEachern* case certiorari should be denied here. Since we think that the *McEachern* case is erroneous we would welcome a reexamination and do not oppose certiorari if the writ were granted for that purpose. But unless the Court were disposed to reexamine the *McEachern* case there would be no occasion for certiorari, since that decision is a complete bar to petitioner's claim.[1]

The two circuit court of appeals decisions relied upon by petitioner (*Lofquist Realty Co.* v. *Commissioner,* 102 F. (2d) 945 (C. C. A. 7th); *Dixie Margarine Co.* v. *Commissioner,* 115 F. (2d) 445 (C. C. A. 6th)) do not present an adequate basis for certiorari. The *Lofquist* decision is distinguishable, since it was expressly based upon an estoppel, 102 F. (2d) at 948; and although the question was implicit in the *Dixie Margarine* case, the rule of the *McEachern* case was not considered by the court nor was the decision even cited by the

[1] It may be, however, that even if the *McEachern* case were overruled, petitioner would still not be entitled to prevail here, either by reason of the express provisions of the revenue acts defining adjusted basis for determining gain or loss upon sale, or by reason of the particular facts of this case.

Government prior to the Government's petition for rehearing in the Circuit Court of Appeals. In these circumstances, it cannot be said that there is a true conflict between the decision below and the decisions in those two cases.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

MARCH 1942.

U. S. GOVERNMENT PRINTING OFFICE: 1942